



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities, compensation for a loss of rental income, for liquidated damages for ending the tenancy early, for cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in payment of those amounts.

The Landlord amended her application on February 4, 2010 to include a claim for unpaid rent and served a copy of the amended application on the Tenant by registered mail on February 7, 2010. The Tenant agreed to proceed with this part of the Landlord's claim notwithstanding that she only received the Landlord's amended application on February 11, 2011.

### Issue(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to liquidated damages?
4. Is the Landlord entitled to recover cleaning expenses?
5. Is the Landlord entitled to keep all or part of the Tenant's security deposit and pet damage deposit?

### Background and Evidence

This one year fixed term tenancy started on January 15, 2009 and expired on January 31, 2010 however on November 2, 2010 the tenancy was renewed for a further one year fixed term ending January 31, 2011. On August 31, 2010, the Tenant gave the Landlord written notice that she was ending the tenancy on September 30, 2010 and she moved out on that day. Rent was \$2,068.00 per month payable in advance on the 1<sup>st</sup> day of each month plus utilities. The Tenant paid a security deposit of \$997.50 and a pet damage deposit of \$997.50 at the beginning of the tenancy. The Landlord has returned the pet deposit to the Tenant. The Tenant says the Landlord did not pay interest on that deposit.

The Landlord said that the oil tank in the rental property was changed at the end of June 2010 and at that time 50 gallons of oil was put in the new tank which the Landlord paid for. Consequently, the Landlord sought to recover \$131.25 for the oil. The Landlord admitted that it was a term of the tenancy agreement that the Landlord would check the amount of oil in the tank at the beginning of the tenancy and that the Tenant was responsible for leaving that amount at the end of the tenancy or compensating the Landlord if it was not. The Tenant said when the old tank was removed, 300 litres of oil was also removed from it and put into the new tank. The Tenant said no one ever consulted her about putting any other oil in the tank and she claimed that the Landlord did not check the oil tank either at the beginning or at the end of the tenancy.

The Landlord said the rental unit was rented to new tenants who took occupancy on October 6, 2010 and that their rent for October 2010 was reduced by 5 days. Consequently, the Landlord sought to recover a loss of rental income for 5 days. The Landlord also sought to recover \$500.00 for liquidated damages. A clause in the tenancy agreement provides for the payment of this amount if the Tenant ends the fixed term tenancy early. The Tenant said she was opposed to these parts of the Landlord's claim because she had no choice but to end the tenancy. In particular, the Tenant said that for medical reasons she could no longer take care of the maintenance on the rental property and reluctantly ended the tenancy for that reason.

The Landlord also sought unpaid rent for the period, January 15 – 31, 2009. The Landlord said that due to an oversight, the Tenant was not billed for this period until very recently. The Landlord said rent was never waived for this period. The Tenant said that she believed rent was not payable for this period because at the beginning of the tenancy, the Landlord only asked for rent cheques beginning February 1, 2009. The Tenant said that in discussions with the owners of the property at the beginning of the tenancy, they advised her that it was a benefit to them that she could move in early because they were moving out did not want to leave the property vacant until the beginning of February. The Tenant said the tenancy at her former rental unit did not end until the end of January 2009 and therefore it would have made no sense for her to agree to make rent payment on two residences unnecessarily. The Tenant said she did not move into the rental unit until January 23, 2009.

The Landlord also claimed that at the end of the tenancy the Tenant did not thoroughly clean the oven and some cupboards and as a result, she compensated the new tenants \$25.00 to do so. The Tenant argued that she left the rental unit reasonably clean including the oven. The Tenant said baked on grease in the oven could not be removed however she admitted that it was clean at the beginning of the tenancy.

### Analysis

The Tenant did not dispute the Landlord's claim for unpaid water bills in the total amount of **\$630.69** and as a result, I find that the Landlord is entitled to recover that

amount. However, I also find that there is insufficient evidence to conclude that the Tenant used oil in the amount of \$131.25 that was paid for by the Landlord and as a result that part of the Landlord's claim is dismissed without leave to reapply.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The Tenant argued that she was forced to end the tenancy early due to medical reasons. RTB Policy Guideline 34 of the Act states as follows:

"A contract is frustrated where, without the fault of either party, it becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible.....Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms."

As a result, I find that while the Tenant's medical condition made it difficult for her to continue to maintain the rental property, it was not a condition that prevented the tenancy agreement from being fulfilled according to its terms. Consequently, I find that the Landlord is entitled to recover a loss of rental income for 5 days in the amount of **\$333.55**.

RTB Policy Guideline #4 (Liquidated Damages) says at page 1 that in order for a liquidated damages clause in a tenancy agreement to be enforceable, "the amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable." The liquidated damages clause in the tenancy agreement states that the \$500.00 payable represents the Landlord's costs of re-renting the rental unit. In the circumstances, (and for the reasons set out in the preceding paragraph) I find that the liquidated damages clause in the tenancy agreement is enforceable and that the Landlord is entitled to recover the amount of **\$500.00** as liquidated damages for ending the fixed term early.

The Landlord also sought to recover unpaid rent for the period January 15 – 31, 2009. Although the Landlord claimed this amount was not waived at the beginning of the tenancy, I find that there is sufficient evidence to suggest otherwise. In particular, although the tenancy agreement said the tenancy started on January 15, 2009, the tenancy agreement is silent as to what the rent, if any would be payable for the partial month of January 2009. Furthermore, I accept the Tenant's evidence that she believed she was doing the owners a favour by moving in earlier than she needed to so that the

property would not be vacant. Consequently, I find that there is sufficient evidence to suggest that rent was waived for this period of the tenancy and as a result, this part of the Landlord's claim is dismissed without leave to reapply.

Section 37 of the Act says that at the end of the tenancy, a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The Landlord claimed that there were a few items such as the oven that were not left reasonably clean and which had to be cleaned by the new tenants. The Tenant claimed that the oven was as clean as she could get it. I find that the oven was not left reasonably clean. The Tenant admitted that the oven was clean at the beginning of the tenancy and that the baked on grease which remained at the end of the tenancy was due to her use. Consequently, I find that the Landlord is entitled to recover **\$25.00** for cleaning expenses.

As the Landlord has been successful in this matter, I also find that she is entitled pursuant to s. 72(1) of the Act to recover the **\$50.00** filing fee for this proceeding from the Tenant. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and accrued interest in partial satisfaction of the monetary claim. The Landlord will receive a Monetary Order for the balance owing as follows:

Unpaid Water bills:	\$630.69	
Loss of Rental Income:	\$333.55	
Liquidated Damages:	\$500.00	
Cleaning expense:	\$25.00	
Filing Fee:	<u>\$50.00</u>	
Subtotal:	\$1,539.24	
Less: Security deposit:	(\$997.50)	
*Accrued interest:	(\$2.54)	*on security deposit & pet deposit
Rent Overpayment:	<u>(\$73.00)</u>	
Balance Owing:	\$466.20	

### Conclusion

A Monetary Order in the amount of **\$466.20** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2011.

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Residential Tenancy Branch